

Pharmacy Reimbursement Task Force

Tuesday, September 24th, 2019
10:00am- 12:00pm
Legislative Hall, House Minority Caucus Room

Meeting Attendees:

Task Force Members

Present

Rep. Andria Bennett
Sen. David Sokola
Rep. Michael Smith
Sen. Anthony Delcollo
Stephen Groff
Faith Rentz
Victoria Brennan
Judi Schock
Hooshang Shanehsaz
Kim Robbins
Vincent Madaline
Kevin Musto
Pam Price

Title/Organization

Chair, House of Representatives
Co-Chair, State Senate
Speaker Appointment, State Representative
Pro-Temp Appointment, State Senator
Designee, DHSS Secretary Walker
Statewide Benefits Office
Designee, Controller General Morton
Designee, OMB Director Jackson
Board of Pharmacy
Delaware Pharmacists Society
Speaker Appointment, Chain Pharmacy Rep
Speaker Appointment, Indep. Pharmacy Rep
Pro-Temp Appointment, MCO (Highmark)

Absent:

Vincent Ryan
Christine Schiltz
Terri Corbo
Kim Robinson

Designee, Insurance Commissioner Navarro
Speaker Appointment, Health Insurer Rep
Pro-Temp Appointment, Hospital Pharmacy
Pro-Temp Appointment, PBM Rep

Attendees:

Leslie Ledogar
Frank Pyle
Rebecca Byrd
Rep. Ray Seigfried
Kiki Evinger
Chris DiPietro
Elizabeth Lewis

On behalf of Vince Ryan, DOI
On behalf of Vince Ryan, DOI
On behalf of Kim Robinson, PBM Rep
State Representative
DHSS
EPIC Pharmacies
Hamilton-Goodman Partners, LLC

Staff:

Lauren Barkachy

House of Representatives

Chair Representative Andria Bennett called the meeting to order at 10:13 am.

After introductions, Chair Bennett introduced House Concurrent Resolution 57 of the 150th General Assembly (HCR 57), which created the Pharmacy Reimbursement Task Force. She stated the goal of this task force is to establish transparency and hold accountable Pharmacy Benefit Managers (PBMs) for their practices in an effort to make prescription drug costs more affordable for Delawareans. Chair Bennett mentioned House Bill 216 that she sponsored this past session that aims to protect pharmacies from decreased reimbursement rates determined by PBMs by prohibiting a PBM from reimbursing a pharmacy for a prescription drug or pharmacy service an amount that is less than the amount the PBM reimburses for itself for the same drug or service.

Senator Delcollo emphasized the importance of promoting transparency of information between health care professionals and consumers. He stated that the General Assembly needs to make sure Delawareans have affordable options and emphasized his commitment to achieving what the task force is here to do.

Chair Bennett opened the floor to questions and comments from the task force members.

Kevin Musto, pharmacist and owner of Atlantic Apothecary, stated that there is a serious PBM issue in Delaware. The original purpose behind PBMs was to control the costs of prescription drugs, but they have since spun off insurance companies and now there is a lot of money transferring between hands. Mr. Musto stated the three biggest challenges in pharmacy:

1. Spread pricing, meaning the PBMs are controlling the costs of prescription drugs.
2. Rebate retentions,
3. Clawbacks.

He said retirees are overpaying for their medications, and small/independent pharmacies are closing because of the pricing irregularities. He emphasized there is a serious lack of transparency.

Chair Bennett mentioned how generic effective rate drugs (GERs) are being used. Mr. Musto replied that pharmacies are using GERs to get around the high costs of brand name medications. He mentioned he loses between \$28,000 and \$40,000 every year from PBM regulations surrounding the use of GER drugs.

Chair Bennett said that in talking with officials from other states, she has come to realize that many people in a lot of states across the country are experiencing these same issues.

Kim Robbins, President of the Delaware Pharmacists Society, referenced an example of PBMs using their practice of spread pricing to profit off state Ohio's Medicaid program. She said PBMs in Ohio were accused of overcharging Ohio Medicaid managed care by \$224.8 million in spread fees from April 1, 2017 to March 31, 2018, and that a lot of independent pharmacies went out of business as a result. She also mentioned that in Maryland, a small chain pharmacy that only had 36 stores was forced to close all its doors and let go of 70 pharmacists within a two week notice because it was unable to keep up with the rising costs imposed by PBMs.

Hooshang Shanehsaz, the Chair of Delaware Board of Pharmacy, explained that pharmacies are meant to ensure best practices are used to deliver quality and safety for consumers and patients. He stated that the closings of small pharmacies because of unregulated PBM practices are creating an access problem. He emphasized that pharmacies are simply asking for more transparency, and that increasing transparency with PBMs will decrease costs and increase consumer access to medications.

Mr. Shanehsaz referenced the New York State Senate's investigation on PBMs, which showed that three national PBMs—CVS Caremark, Express Scripts Inc., and OptumRx—control approximately 80 to 85 percent of the pharmacy industry market. He emphasized that PBMs are not controlled and operate with no oversight. He also noticed that PBMs have begun pushing customers to mail order their medications instead of picking them up at a pharmacy, which has resulted in a decrease in patient compliance with medication instructions. He estimated approximately 50 percent of hospital medication related admittances are from people taking their medications incorrectly and one of the factors is because they did not talk face-to-face with a pharmacist beforehand.

Mr. Musto mentioned that independent pharmacies are being forced to become credentialed per their contracts with their PBMs, but that there is no advantage for the pharmacy to becoming credentialed. He said his pharmacy loses between \$300 and \$500 every time they fill certain critical medication prescriptions, such as insulin, and these costs really hurt independent pharmacies like his.

Senator Sokola asked who made the decision that pharmacies need to be credentialed.

Mr. Musto responded it was the PBMs.

Senator Sokola expressed concern that PBMs can create these rules within their contracts. He stated that rules like this are a death sentence for consumers who cannot afford their critical medications like insulin.

Mr. Musto said that insulin has become the most targeted medication by PBMs. Pharmacies can lose between \$300 and \$400 if a consumer fills a prescription for a three-month supply instead of a one-month supply, and pharmacies have no opportunity for recourse. He emphasized that losing a lot of money on filling prescriptions causes severe money issues for small pharmacies and a lot of them can no longer afford to make ends meet.

Sen. Delcollo asked what explanations PBMs provide for the practices and regulations they enforce.

Mr. Shanehsaz responded that there are no explanations provided. He said the PBMs decide which pharmacies they want to audit and when they want to audit them, and the audits are very disruptive because pharmacists have to stop their work to engage with the PBMs. During the audit, PBMs can request anything they want and they do not have to explain their reasoning.

Mr. Musto explained that pharmacists tell the PBM what they actually pay for different medications, but that the PBMs take pricing from other locations such as the West Coast or Puerto Rico and apply those prices to drugs sold in this part of the country. He emphasized that acquisition costs are much higher on the East Coast.

Vincent Madaline stated that his employer, Walgreens, does not own a PBM and is sometimes carved out of health care plans, rendering the pharmacy unable to serve the surrounding community. He added that some pharmacies who have a PBM are reimbursed 45 percent more than pharmacies that do not have a PBM, such as Walgreens.

Sen. Delcollo stated that a set of rules favoring one type of entity over another is not fair to consumers nor to the disadvantaged entity.

Mr. Madaline expressed concern that Walgreens has had to close several branches, and that consumers are the ones who really suffer when their local pharmacy is closed.

Mr. Shanehsaz stated that as reimbursement rates continue to decrease costs need to be controlled, which leads to a decrease in the time pharmacists can spend with individual patients, the time spent filling a prescription, and the quality in their patient care. He stated that in order to decrease costs, there needs to be transparency of PBM practices.

Mr. Madaline emphasized that patient care is the priority of pharmacies. He said that decreased reimbursement rates are driving up the costs of medications, including the critical medications that people depend on to keep them alive. He concurred with Mr. Shanehsaz's opinion of increased transparency and oversight for PBMs.

Mr. Musto emphasized that PBMs do not support the pharmacies.

Chair Bennett mentioned House Bill 194, which was signed into law over the summer and allows pharmacists to appeal their contracts with PBMs.

Mr. Shanehsaz said on a national level, pharmacists have been working to appeal their PBM contracts. He added that if PBMs are not doing anything wrong, then they should not have a problem with increased transparency.

Sen. Delcollo emphasized that transparency is very important. He asked why implementing rules of transparency would increase costs coming out of the state's General Fund (GF). He stated that the state has already passed an anti-clawbacks bill, and therefore should be able to implement a rule that says if a pharmacy has a PBM, then it is illegal for that pharmacy to be given an advantage over a pharmacy that does not have a PBM.

Faith Rentz, the Director of the Statewide Benefits Office, responded that the State would need to modify the existing contracts in place with the PBMS in order to avoid an increase in costs to the GF. She felt the discussion needed to center on changing the PBM contract arrangement.

Mr. Shanehsaz said PBMs are not paying what they say they are paying and cited the following practices:

- PBMs earn about 18 cents for every claim that is filled and for every transaction that takes place with the pharmacies.
- PBMs have also found a loop hole in the law that allows them to push people to mail order their medications.
- PBMs may keep 95 percent of the money they save plan sponsors through rebates and only give the sponsors five percent of what they are owed.
- PBMs have decreased pharmacy reimbursement rates, causing many independent pharmacies to permanently close their doors.
- PBMs reimburse their pharmacies a smaller amount of money for a brand name drug if there is a generic option available, even if the employer is asking for the brand name option.
- PBMs want pharmacies to only sell their preferred generic drug to consumers even though the brand name drug is preferred by the plan sponsor so that they can pocket a higher rebate.
- PBMs can increase administrative charges through prior authorizations for patients.

Ms. Robbins referenced Senate File 563 from the Iowa General Assembly, which provides a good example of how the state is handling PBM rebate issues. She stated that parts of this bill could be used to amend Chair Bennett's House Bill 194 next session.

Chair Bennett thanked Ms. Robbins for this information and said that she will look into it.

Mr. Musto said that his pharmacy loses money on brand name drugs, so they try to make up the costs by selling the generic brands instead. He emphasized that selling the generic option may not be the most profitable for independent pharmacies for long since PBMs can change rebates.

Ms. Robbins emphasized that patients receiving counterfeit drugs is a huge issue.

Frank Pyle of the Delaware Department of Insurance (DOI) said the Insurance Commissioner's Office has a new investigator who is being trained to investigate PBMs in Delaware. Mr. Pyle mentioned that Arkansas is the first state in the nation to go after the anti-competitive business practices of PBMs and establish transparency, and that they have been successful. Mr. Pyle stated that PBMs are a monopoly, and that they make pharmacies sign very controlling contracts that create arbitrary rules. Mr. Pyle stated that Insurance Commissioner Trinidad Navarro's biggest focus is to help consumers with the critical medications they need to survive.

Sen. Sokola stated that the regulatory process for PBMs has to involve transparency.

Mr. Pyle said DOI has been looking into what other states are doing to find out what has been successful. He said once they have their report on successful practices, they will post their findings for the 30-day public comment period.

Leslie Ledogar of DOI said that Chair Bennett's House Bill 194 has two parts in establishing transparency with PBMs: DOI's oversight and required registration. DOI is focusing on the

registration component now, and Commissioner Navarro will then decide when a public hearing will take place.

Sen. Sokola asked if DOI puts out a draft of their findings and the 30-day public comment period passes would any changes or updates to that draft warrant another 30-day public comment period.

Ms. Ledogar replied yes.

Mr. Pyle said that per House Bill 194, all PBMs in the state will have to report to the Insurance Commissioner's Office.

Mr. Shanehsaz asked if any pharmacists in the group have received phone calls from their PBM about consumers changing their medication. He said that PBMs charge employers for these phone calls and emphasized that there is fraudulent behavior from PBMs in regards to this practice. He continued to emphasize the importance of pharmacies by saying they prevent people from having to go to hospitals, and therefore save the state, health insurance companies, and consumers billions of dollars.

Representative Ray Seigfried thanked Chair Bennett for putting together the task force. Chair Bennett opened the floor up for public comment.

Chris DiPietro from EPIC Pharmacies stated that PBMs put a lot of pressure on the market place. He said there is no clear solution to the PBM issue, but that the solution needs to involve a lot of transparency and a lot of work from DOI.

Rebecca Byrd from Byrd Group spoke about her client Express Scripts Cigna. She said Express Scripts Cigna has worked with DOI and has been involved in these issues. She mentioned that PBMs were created because drugs prices are so expensive, and Express Scripts Cigna is committed to getting those savings for the state. She mentioned that Express Scripts has a footprint in New Castle, Delaware with 20-30 employees.

It was decided the next meeting would take place on **Wednesday, October 9th** from **10:00am-12:00pm**. Chair Bennett stated that all other meetings going forward will be more than two weeks apart.

Chair Bennett passed out the New York State Senate's report on their PBM investigation to all the members present.

Chair Bennett adjourned the meeting at 11:59 am.